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IN THE

Supreme Court of the United States

October Term, 1963

No. 60

JAMES RUSSELL ROBINSON, JOSEPH PRICE PERKINS, MARVIN EDISON ROBINSON, THOMAS VAWN ROLAND, JAMES H. LANE, THOMAS WALTER GAITHER, BARRY M. COHEN, ANGELINE E. BUTLER, HENRY PRINGLE, BERNARD LAFAYETTE, OLIVER WILLIAM ST. PEE, LEON EVERETTE BAILEY, DOROTHY R. MILLER, PATRICIA STEPHENS, PRICILLA STEPHENS, ALICE M. PARHAM, ROBERT PAUL YOUNG, and DR. CARL ELLIOTT YAEGER, JR.,

Appellants,

v.

THE STATE OF FLORIDA,

Appellee.

On Appeal from the Supreme Court of the State of Florida

BRIEF FOR THE APPELLANTS

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THE STATE OF FLORIDA,

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BRIEF FOR THE APPELLANTS

OPINION BELOW

The opinion of the Supreme Court of Florida is reported in 144 So. 2d 811. (R. 46) The opinion of the trial court, delivered orally at the conclusion of the trial, is set forth in the Record. (R. 36)

JURISDICTION

The State of Florida filed a criminal information against Appellants on August 17, 1960, pursuant to Florida Statutes § 509.141. (R. 1) Appellants were tried and were found by the trial court to have violated said statute and judgments were entered against them on August 26, 1960. (R. 36, 37) Appellants filed a Notice of Appeal to the Circuit Court for the Eleventh Judicial Circuit in and for Dade County, Florida, on September 21, 1960 (R. 8), and the judgments of the trial court were ultimately affirmed by the Supreme Court of Florida in its Order and Opinion filed September 19, 1962. (R. 46) Appellants filed their Jurisdictional Statement herein on January 16, 1963, and this Court entered its Order Noting Probable Jurisdiction on June 10, 1963.

Jurisdiction of this Appeal is invoked pursuant to 28 U.S.C. § 1257(2).

QUESTION PRESENTED

Where a group of Negroes and white persons in association with Negroes remain in a restaurant after the manager has refused to serve them and has requested them to leave the premises; and where the manager's refusal to serve and his request to leave are based upon the fact that the group comprises Negroes and white persons in association with Negroes; and where the police, at the manager's request, arrest the group because of their refusal to comply with the manager's request to leave the premises; are the arrests and subsequent convictions of the group for alleged violations of Florida Statutes § 509.141 in violation of the equal protection of the laws

guaranteed by the Fourteenth Amendment to the Federal Constitution?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. § 1 of the Fourteenth Amendment to the Federal Constitution.

2. R. S. § 1977 (42 U.S.C.A. § 1981), which provides that:

> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens. . . ."

3. § 2 of the Declaration of Rights of the Florida Constitution, which provides that: "All political power is inherent in the people."

4. The following Sections of Chapter 509 of the Florida Statutes, which are set forth in full in the Appendix hereto: § 509.012; § 509.032(1); § 509.092; § 509.141; § 509.211; § 509.221; § 509.241; § 509.261; § 509.271; and § 509.291 (App. 6-25).

5. Florida Statutes §§ 352.03-353.18; 741.11-741.16; 798.04 and 798.05; and 950.05-950.08, set forth in full in the Appendix hereto. (App. 1-2; 26-31).

6. Florida Statutes § 948.01(1) and § 948.01(3), set forth in full in the Appendix hereto (App. 28).

STATEMENT OF THE CASE

The State of Florida filed an information against Appellants pursuant to Florida Statutes § 509.141(3), (App. 8) which charged that on August 17, 1960, they entered Shell's City Restaurant in Miami, Florida, seated themselves as guests at tables in the restaurant and unlawfully remained in the restaurant after having been requested by the management to leave, the management being of the opinion that if Appellants were served it would be detrimental to the restaurant. (R. 1 - 2) Trial was held in the Criminal Court of Record in and for Dade County, Florida, on August 26, 1960. Following the presentation of the State's case, Appellants moved for a judgment of acquittal, but their motion was denied. (R. 35) The Appellants presented no evidence. The trial court then entered judgments pursuant to Florida Statutes, Chapter 948 (App. 28), wherein it ordered that adjudications of guilt and the imposition of sentence be stayed, and placed Appellants on probation. (R. 36-37)

The record contains no conflict as to the material facts alleged in the information. The Appellants, comprising both colored and white persons, entered the restaurant and sat at several tables, and asked to be served. The manager refused to serve them, and called the police. A police officer arrived and the manager, accompanied by the officer, went to each table and again requested Appellants to leave, and they again refused. The police officer then advised them to leave and when they did not, he placed them under arrest. (R. 16, 17, 18, 23)

The manager stated that it was his opinion that the presence of Appellants was detrimental to his business for

the reason that they were Negroes and white persons in association with Negroes. (R. 22) The restaurant constitutes one of nineteen departments in the Shell's City department store, and the manager admitted that other patrons were being served in the restaurant at this time, and also admitted that it was not detrimental to the business for Negroes to purchase products in other parts of the store. (R. 23, 24) Although Negroes are invited to purchase in eighteen departments in the store, they are not allowed in the nineteenth, the restaurant. (R. 29)

A vice-president of the store stated that Shell's City's policy of not serving Negroes is based upon the customs, habits and traditions of the majority of the white people in the county and the state not to serve white and colored people seated in the same restaurant and that if Shell's City tried "to break that barrier", it "might have real trouble". (R. 29, 30)

SUMMARY OF ARGUMENT

The actions of the police and the courts of the State of Florida in evicting Appellants from the restaurant and in arresting and convicting them for alleged violations of Florida Statutes § 509.141 constituted state enforcement of racial discrimination and a denial of Appellants' rights to the equal protection of the laws guaranteed by the Fourteenth Amendment. Neither the State nor the restaurant owner can claim that the discrimination was purely "private" inasmuch as the arrests, prosecution and convictions were all effectuated by organs of state power. *Shelley* v. *Kraemer* and *Barrows* v. *Jackson*, *post*.

Further, since restaurants under Florida law are sub-

ject to the licensing, regulatory and supervisory authority of the Florida Hotel and Restaurant Commission, they operate as quasi-public instrumentalities of the State. Thus, the State has, within the meaning of *Burton* v. *Wilmington Parking Authority*, *post*, so far insinuated itself into a position of interdependence with restaurants that the discriminatory practices cannot be deemed so purely private as to fall outside the scope of the Fourteenth Amendment. Consequently, Shell's City has the affirmative constitutional obligation to serve the public without discriminations based upon race.

Finally, the discrimination practiced by Shell's City was the result of local racial customs, and the mass pressures of such customs, exerted by the people of Dade County and the State of Florida, thus coercing the restaurant to discriminate, constituted state action within the meaning of the Fourteenth Amendment and in violation thereof.

ARGUMENT

I

The participation by the police and courts below in arresting and convicting Appellants for alleged violation of Florida Statutes § 509.141, in aid of the restaurant's policy of racial discrimination, constituted state enforcement of racial discrimination and, consequently, a denial of Appellants' rights to the equal protection of the laws guaranteed by the Fourteenth Amendment.

1. In order to narrow and define the issues involved,

in this appeal, Appellants would first show to the Court that unlike other "sit-in" cases recently decided by the Court, (1) the issue here is not that of lack of evidence to support a conviction for disorderly conduct or unlawful assembly or the like, as in *Garner* v. *Louisiana*, 368 U.S. 157; 7 L.Ed.2d 207; 82 S.Ct. 248 (1961), and companion cases; (2) we are not here confronted with any statute, ordinance, or administrative policy expressly requiring racial segregation in restaurants, as in *Peterson* v. *City of Greenville*, and companion cases, 373 U.S. 244; 31 Law Week 4475 (1963); and (3) there is no assertion that the activities in question involve interstate commerce, as in *Boynton* v. *Virginia*, 364 U.S. 454; 5 L.Ed.2d 206; 81 S.Ct. 182 (1960).

2. Appellants rely first upon *Shelley* v. *Kraemer*, 334 U.S. 1, 22; 92 L.Ed. 1161, 1185; 68 S.Ct. 836 (1948), where the Court held that:

> "The Constitution confers upon no individual the right to demand action by the State which results in the denial of the equal protection of the laws to other individuals. And it would appear beyond question that the power of the State to create and enforce property interests must be exercised within the boundaries defined by the Fourteenth Amendment."

Accord: Barrows v. *Jackson*, 346 U.S. 249; 73 S.Ct. 1031; 97 L.Ed. 1586 (1953). Cf. *Hurd* v. *Hodge*, 334 U.S. 24; 92 L.Ed. 1187; 68 S.Ct. 847 (1948). In these cases, the Court refused to permit an arm of government to protect or give effect to a private party's asserted contractual property right, in the form of a restrictive covenant, where such

protection or assistance would have resulted in unlawful racial discrimination. In the case at bar Shell's City called upon the police of Miami to evict Appellants from the restaurant solely for the reason of racial discrimination. Thereupon the police in conjunction with the office of the State Attorney for Dade County, invoked the criminal jurisdiction of the Florida judiciary, and this aggregation of state authority succeeded in effectuating the restaurant's racial policy. Appellants, predicating their position upon *Shelley* and *Barrows*, submit that the Court should prohibit the public authorities of the State of Florida from lending their coercive power to protect or effectuate Shell's City alleged "property right" to refuse to serve patrons who are Negroes or in association with Negroes.

The State's position appears to be that the restaurant owner, as a "private party", has the unfettered right to select its customers and patrons by virtue of and in accordance with Florida Statutes § 509.141. (App. 8) Sub-section (1) of the statute authorizes the restaurant owner to remove or cause to be removed any guest "who, in the opinion of the management, is a person whom it would be detrimental to such . . . restaurant . . . for it any longer to entertain."[1] Sub-section (3) provides that any guest who shall remain in the restaurant after being requested to leave shall be guilty of a misdemeanor, and shall be deemed to be unlawfully within the restaurant. Sub-section (4) provides that the management may call any law enforce-

[1] A similar legislative assertion of the right to private choice is contained in Florida Statutes § 509.09, which provides that:

"Public lodging and public food service establishments are declared to be private enterprises and the owner or manager of public lodging and public food service establishments shall have the right to refuse accommodations or service to any person who is objectionable or undesirable to said owner or manager."

ment officer to its assistance, who shall forthwith eject such person from the premises.

§ 509.141 may be valid on its face, as it does not by its terms define race as a criterion of undesirability, and Appellants do not contest the State's right to assist a restaurateur in evicting patrons who refuse to leave where their undesirability is predicated upon appropriate reasons other than race. If a Negro were boisterous, intoxicated, or improperly attired, the restaurateur and the police would be justified in ejecting him, for these would be criteria of undesirability unrelated to the patron's race. However, the State's information did not charge, nor does the record contain, any allegations or evidence that any of the Appellants were unmannerly, or improperly attired, or engaged in any disorderly conduct. It is clear from the testimony of the managers that they considered Appellants undesirable and their presence detrimental to the restaurant's business for one reason alone, namely, that they were Negroes or persons in association with Negroes. Accordingly, it is Appellants' position that while the Statute may be valid on its face, the State invalidly applied it in the instant case by effectuating and enforcing racial discrimination. And the ruling of the Florida Supreme Court, below, in permitting the application of the statute in this case in effect authorized "discriminatory classification based exclusively on color." Stewart, J., concurring in *Burton* v. *Wilmington Parking Authority*, *post*, 365 U.S. 715, 727; 6 L.Ed.2d 45, 53.

The State's argument that the restaurant owner, as a "private party", has the right to select its customers, even on the basis of race, is sophistic. The entire transaction—from its inception, when the management requested Ap-

pellants to leave, to its conclusion, when the Appellants were convicted—was programmed and consummated pursuant to Florida Statutes § 509.141 and the statute was, in practical effect, applied to them solely because they are Negroes or were in association with Negroes. It is a sophistry to suggest that the discrimination was "private" when Appellants were arrested by police officers of the City of Miami, were incarcerated in a public jail awaiting trial, were prosecuted by the State Attorney's office, and were convicted of a criminal offense in a criminal court and under and by virtue of the criminal statutes of the State of Florida. The very participation of the office of the Attorney General of the State of Florida in this appeal further repudiates any notion that this is simply a "private" issue.

If, as in *Shelley* and *Barrows*, the civil sanctions of injunction and common law judgments are not available to one who would assert a property right for racial reasons, then *a fortiori* the exercise of the public power in the form of criminal sanctions should be prohibited. In the instant case the State injected itself into the restaurant owner's affairs to the extent of carrying out a mass arrest, staging a mass criminal trial and placing the Appellants in jeopardy of mass incarceration in the public jail. But for the issue of race, this entire drama would not have been enacted, and such blatant racial discrimination cannot be characterized as simply a private affair when this formidable arsenal of State power is brought to bear to enforce it.

The judgment below is also in direct conflict with the decision of the Court of Appeals for the Third Circuit in *Valle* v. *Stengle*, 176 F.2d 697 (1949). Plaintiffs there brought suit under the Civil Rights Acts alleging a denial

of equal protection of the laws. Their complaint alleged that they were both Negroes and whites; and that the defendants, being the corporate owner of a private amusement park, the individual managers thereof, and the local chief of police, denied plaintiffs admission to the swimming pool therein and ejected them from the park on the ground that their party contained Negroes. In sustaining their complaint against a motion to dismiss the Court stated that:

> ". . . the plaintiffs were denied equal protection of the laws, within the purview of the Fourteenth Amendment because they were Negroes or acting in association with Negroes when they attempted to gain admission to the pool at Palisade Park. They, or some of them, were ejected from the park, were assaulted and were imprisoned falsely, as alleged in the complaint, because they were Negroes or were in association with Negroes, and were denied the right to make or enforce contracts, all within the purview of and prohibited by R. S. Section 1977". 176 F.2d 697, 702.

The Court held that the right to solicit contracts may not be violated by State action where such action is prompted by the fact that the soliciting parties are Negroes or persons acting in association with Negroes. Appellants here, like the plaintiffs in *Valle*, were denied the right to trade with Shell's City because of the fact that they are Negroes or persons in association with Negroes. R. S. § 1977, cited above, provides that:

> "All persons within the jurisdiction of the United States shall have the same right in every State

and Territory to make and enforce contracts . . . and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens. . . . "

3. Concern has been voiced by some writers[2] that if the rule in *Shelley* and *Barrows* be extended to cases like the one at bar, then by further extension none could discriminate in their own homes against unwanted persons who happened to be Negroes, and that Negroes would thereby be accorded a special status as privileged trespassers. In reply, Appellants state first that it tortures the imagination to conceive of a hypothetical case coming to pass in which a private householder would invite the entire public, or a substantial segment of it, to enter his private premises on an otherwise indiscriminate basis, but refuse to admit Negroes and solely because of their race. Such a hypothetical case would involve not merely the right to turn a Negro away from one's door *under any circumstances;* rather, this special case must posit a householder inviting all persons similarly situated onto his premises, but excluding Negroes and solely because of their race. Such would indeed be a rare and extraordinary occurrence, but even if it should eventuate, its social significance would be trivial when compared with the wholesale discriminations in places of public accommodation which occur daily and in hundreds of communities throughout the country. It hardly needs repeating that racial discrimination by restaurants, which are otherwise open to the general public, constantly subject members of the Negro minority to public humiliation and indignities, and

[2]For a scholarly analysis of *Shelley*, its consequences, and its detractors, see Henkin, *"Shelley* v. *Kraemer*: Notes for a Revised Opinion", 110 U. of Pa. L.R. 473 (1962).

publicly proclaim them to be, in effect and *en masse*, inferior members of American society. Any such racial discrimination, as suggested above, by a private home-owner, while manifesting a pathetic prejudice, would be an isolated event and would not subject its victims to the notorious humiliation occasioned by restaurant discriminations; indeed, a Negro intruding upon the intimacy of a private home would hardly command serious social concern.[3]

Further, to argue the applicability *vel non* of *Shelley* and *Barrows* in the case at bar on the basis of the case of the hypothetical homeowner would be to argue *ignotum per ingnotius* and to lose touch with reality; the problem of the private home-owner should therefore not control the disposition of the actual case now before the Court. "It is of course true that great consequences can grow from small beginnings, but the measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow." Goldberg, J., concurring in *School District of Abington* v. *Schempp*, 374 U.S. 203; 31 Law Week 4683, 4715 (1963)

4. The circumstances in the case at bar are of critical immediacy and the application of the principle involved to places of public accommodation are of national importance. The Shell's City restaurant is located in a large department store, its business purpose is to serve the public, and it solicits the business of the public indiscriminately, except in one regard—that of race. "Access by the public is the very reason for its existence." Douglas, J., concurring in *Lombard* v. *Louisiana*, 373 U.S. 267; 31 Law Week 4476, 4478 (1963). The scope of the indignities and dis-

[3]Cf. Henkin, *op. cit.*, pp. 498, 499.

criminations which are practiced thus becomes a measure of their constitutional consequences. The issue, therefore, viewed realistically, is one of reconciling the restaurant owner's asserted proprietary rights with the constitutional guarantee of equal protection of the laws. Appellants contend that in this central issue that fundamental guarantee of racial equality should and must prevail over the asserted property right of private commercial choice. In choosing between similar conflicting claims of constitutional and equitable preferences, this Court has heretofore declared, in a related case, that the enforcement of restrictive racial covenants is not only violative of constitutional and statutory guarantees, but is "contrary to the public policy of the United States." *Hurd* v. *Hodge, supra*, 334 U.S. 24, 34; 92 L.Ed 1187, 1195. That same public policy should require an end to racial discrimination in restaurants. Indeed, that same public policy was dramatically manifested on August 2, 1963 when Ambassador Stevenson announced to the Security Council of the United Nations that our government would end the sale of military equipment to the Union of South Africa by the end of 1963, because of "the evil business of apartheid". Ambassador Stevenson, in referring to the many manifestations of apartheid in South Africa, including segregation in public accommodations, declared that "such indignities are an anachronism that no progressive society can tolerate, and the last vestige must be abolished with all possible speed."[4] With our public policy thus nobly proclaimed to the rest of the world, it is inconceivable that, where the choice is before us, we could assume a posture any less noble within our own nation.

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[4] *The New York Times*, August 3, 1963, p. 6.

5. The State begs the question when it asserts that the restaurant owner has the "right" to select his customers on the basis of race. First, such "rights" as he may possess and which are legally enforceable, derive their operable force from the State, and the participation of the State in this situation has already been discussed at length. Second, the private use of private property has at common law always been subject to a variety of judge-made restrictions, and thus the hoary maxim, *sic utere tuo, ut alienum non laedas*. In further illustration, it is a commonplace of the common law that the use of one's property for a noxious purpose will subject one to civil liability for maintaining a nuisance, and will also justify the exercise of the State's police power to terminate or control that use, cf. *Commonwealth* v. *Alger*, 7 Cush. 53; 61 Mass. 53; and strict liability, regardless of care, follows from the maintenance on one's property of an extraordinary hazard, *Rylands* v. *Fletcher*, 1868, L. R. 3 H.L. 330, 338. Again, one cannot deprive the community of the alienable use of one's own property in violation of the judge-made rules against perpetuities and accumulations, and other examples of common law restrictions abound in the field of future interests. Indeed, as a principle of federal constitutional law, a municipality may affirmatively prohibit racial dismrimination by restaurants and provide criminal sanctions for violations, and without doing constitutional violence to the owners' asserted rights of liberty and property. *District of Columbia* v. *John R. Thompson Company, Inc.*, 346 U.S. 100; 97 L.Ed. 1480; 83 S.Ct. 1007 (1952).

As the Court said in *Nebbia* v. *New York*, 291 U.S. 502, 525; 78 L.Ed. 940, 948; 54 S.Ct. 505 (1934):

"Under our form of government the use of prop-

> erty and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise freedom of contract to work them harm."

A striking illustration of choice between conflicting *property* rights occurred in *Miller* v. *Schoene*, 276 U.S. 272; 72 L.Ed. 568; 48 S.Ct. 246 (1928), where the State of Virginia had ordered the destruction of ornamental cedar trees to prevent contamination of nearby apple orchards with cedar rust. In upholding the State's action, the Court said that:

> "When forced to such a choice the state does not exceed its constitutional powers by deciding upon the destruction of one class of property in order to save another which, in the judgment of the legislature, is of greater value to the public." 276 U.S. 272, 279; 72 L.Ed. 568, 571.

In the case at bar, not merely property rights, but significant *human* rights are at stake. Appellants submit that the Court here can and should make the kind of accommodation between property rights and human rights as it made in *Marsh* v. *Alabama*, 326 U.S. 501, 539; 90 L.Ed. 265, 270; 66 S.Ct. 276 (1946), where the Court concluded that:

> "When we balance the Constitutional rights of owners of property against those of the people to

> enjoy freedom of press and religion, as we must here, we remain mindful of the fact that the latter occupy a preferred position."

Surely the right to racial equality, at this juncture of America's historical development, shares with the freedom of press and religion an equally elevated position in the hierarchy of preferred constitutional rights.

Such accommodations of conflicting constitutional pressures have, of course, characterized the Court's determinations in a variety of situations. Freedom of speech and assembly is typically weighed against an asserted clear and present danger. *Cantwell* v. *Connecticut*, 310 U.S. 296; 84 L.Ed. 1213; 60 S.Ct. 900 (1940). The command of religious disestablishment has been leavened to accommodate the needs of public safety. *Everson* v. *Board of Education*, 330 U.S. 1; 91 L.Ed. 711; 67 S.Ct. 504 (1947). The many meanings of procedural due process define and modify our criminal jurisprudence in a system of ordered liberty. *Palko* v. *Connecticut*, 302 U.S. 319; 82 L.Ed. 288; 58 S.Ct. 149 (1937). How far a state may go in regulating interstate commerce without unduly burdening it is a recurrent paradox. Cf. *Southern Pacific Co.* v. *Arizona*, 325 U.S. 761; 89 L.Ed. 1915; 65 S.Ct. 1515 (1945). And the reasonableness of classifications and discriminations under the equal protection clause itself has frequently required resolution by the Court. *McGowan* v. *Maryland*, 366 U.S. 420; 6 L.Ed.2d 393; 81 S.Ct. 1101 (1961).[5]

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[5]But of course only the most extraordinary circumstances, such as the exigencies of wartime security, can justify discrimination based on race. *Hirabayashi* v. *United States*, 320 U.S. 81; 87 L.Ed. 1774; 63 S. Ct. 1375 (1943).

In the instant case the conflict between property rights and civil rights should and must be resolved against the use of state laws such as §509.141 which aid racial discrimination by restaurant owners. Moreover, such a resolution need not imply the assertion of any absolutist principles which would necessarily embarrass judicial flexibility where it may be needed in the future. As the Court said in *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 725; 6 L.Ed.2d 45, 52; 81 S.Ct. 856 (1961):

> " . . . respondent's prophecy of nigh universal application of a constitutional precept so peculiarly dependent for its invocation upon appropriate facts fails to take into account 'Differences in circumstances [which] beget appropriate differences in law,' Whitney v State Tax Com. 309 US 530, 542, 84 L ed 909, 915, 60 S Ct 635."

This same approach, in the area of religious disestablishment, is embodied in Mr. Justice Brennan's opinion in *School District of Abington* v. *Schempp, supra:*

> "These considerations bring me to a final contention of the school officials in these cases: that the invalidation of the exercises at bar permits this Court no alternative but to declare unconstitutional every vestige, however slight, of cooperation or accommodation between religion and government. I cannot accept that contention. While it is not, of course, appropriate for this Court to decide questions not presently before it, I venture to suggest that religious exercises in the public schools present a unique problem. For not every involvement of religion in public life violates the

> Establishment Clause. Our decision in these cases does not clearly forecast anything about the constitutionality of other types of interdependence between religious and other public institutions." 31 Law Week, 4683, 4710.

Appellants offer, then, no startling novelty of the law, either in substance or approach. The precedents are bountiful, the approach is traditional. "There is here no seismic innovation. The edifice of justice stands, its symmetry to many, greater than before." Cardozo, J., in *Palko* v. *Connecticut*, 302 U.S. 319, 328; 82 L.Ed. 288, 294.

II.

Apart from the participation of the police and the state courts herein, the discriminatory action of Shell's City itself constituted state action, since by virtue of the Florida restaurant licensing law, Florida Statutes Chapter 509, together with the regulations promulgated thereunder, the State has, within the meaning of the BURTON v. WILMINGTON PARKING AUTHORITY, "so far insinuated itself into a position of interdependence" with restaurants "that it must be recognized as a joint participant in the challenged activity."

The Florida legislature has declared that the restaurant business is intimately affected with the public interest and Chapter 509 describes in great detail the public duties and responsibilities of the restaurants. The legislature has established the Florida Hotel and Restau-

rant Commission,[6] which has continuing regulatory supervision over "public food establishments", and the legislature requires that the Commissioner shall execute the laws governing their inspection and regulation "for the purpose of safeguarding the public health, safety, and welfare."[7] Having thus stated the public interest of the State of Florida in the restaurant business, Chapter 509 then proceeds to elaborate upon the details of its regulation. Thus, it requires approval by the Commissioner of the architect's plans for the erection or remodeling of any restaurant.[8] It regulates fire escapes, stairways and exits.[9] It regulates plumbing, lighting, heating, cooling and ventilation facilities.[10] It requires every restaurant to obtain a license as a "public food service establishment",[11] makes it a misdemeanor for such an establishment to operate without a license, and sets forth the procedure for revocation of such licenses.[12] It forbids a municipality or county from issuing any occupational license unless the Commissioner has first licensed the restaurant.[13] And it establishes an advisory council of private restaurants and hotels for the purpose of and "to suggest means of better protecting the health, welfare and safety of persons utilizing the services offered by the industries represented on the council."[14]

The statute pursuant to which Appellants were arrested, § 509.141, is an integral part of the above Chap-

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[6]Florida Statutes § 509.012 (App. 6).
[7]Florida Statutes § 509.032(1) (App. 7).
[8]Florida Statutes § 509.211(4) (App. 11).
[9]Florida Statutes § 509.211(1) (App. 10).
[10]Florida Statutes § 509.221 (App. 15).
[11]Florida Statutes § 509.241 (App. 18).
[12]Florida Statutes § 509.261 (App. 21).
[13]Florida Statutes § 509.271 (App. 24).
[14]Florida Statutes § 509.291 (App. 25).

ter and an integral part of this elaborate legislative schema and program encompassing "public food establishments."

In addition, extensive regulations have been promulgated by the Commissioner, prescribing in minute detail the health and safety measures by which every restaurant must abide. Florida Administrative Code, Chapters 175-1, 175-2 and 175-4. And it is especially important to note that the regulations are not concerned solely with health and safety measures, but in order to promote and safeguard the public welfare, also, *inter alia*, (1) provide that licenses may be issued only "to establishments operated, managed or controlled by persons of good moral character";[15] (2) prohibit publication or advertisement of false or misleading statements relating to food or beverages offered to the public on the premises;[16] and (3) provide that "achievement rating cards be conspicuously displayed".[17]

Moreover, Chapter 509 is obviously not designed merely to raise revenue or merely compel compliance with zoning ordinances, as in the case of the typical occupational licensing statute. And even though the grant of an occupational license as such may be a condition precedent

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[15]*Florida Administrative Code*, § 175-1.02. The 1963 session of the Florida Legislature further implemented the law by authorizing the Commission to revoke or suspend a license when "Any person interested in the operation of any such establishment, whether owner, agent, lessee, or manager, has been convicted within the past five years in this state or any other state or the United States of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, illegally dealing in narcotics, or any other crime involving moral turpitude." Chapter 63-63, Florida Statutes, § 509.261 (4)(a).

[16]Florida Administrative Code § 175-4.02.

[17]Florida Administrative Code § 175-1.03.

to engaging in the restaurant business, nevertheless, unlike the usual licensing requirements for merchants and tradesmen, Chapter 509 provides for the exercise of continuing administrative supervisory oversight and control, comparable to the supervision of businesses normally described as public utilities.

In addition, Shell City, Inc., *qua* corporation, exists only by virtue of state law, and is subject to the general Florida laws governing the creation, regulation, and dissolution of corporate entities. Florida Statutes, Chapter 608.

A restaurant, therefore, so linked to the state, and so involved in matters of obvious public concern, is a quasi-public instrumentality and cannot hide behind the gossamer defense of "private" action.

> "A license to establish a restaurant is a license to establish a public facility and necessarily imports, in law, equality of use for all members of the public . . . . Those who license enterprises for public use should not have under our Constitution the privilege to license it for the use of only one race. For there is the overriding constitutional requirement that all state power be exercised so as not to deny the equal protection of any group." Douglas, J., concurring in *Garner* v. *Louisiana*, 368 U.S. 157, 184, 185; 7 L.Ed.2d 207, 226.

And as Harlan, J., observed, dissenting in *The Civil Rights Cases*, with regard to state-licensed enterprises:

> "The authority to establish and maintain them

> comes from the public. The colored race is a part of that public. The local government granting the license represents them as well as all other races within its jurisdiction. A license from the public, to establish a place of public amusement, imports, in law, equality of right, at such places, among all the members of that public. This must be so, unless it be—which I deny—that the common municipal government of all the people may, in the exertion of its powers, conferred for the benefit of all, discriminate or authorize discrimination against a particular race, solely because of its former condition of servitude." 109 U.S. 3, 41; 27 L.Ed. 835, 849.

In *Burton* v. *Wilmington Parking Authority*, *supra*, the Delaware statute in question was not unlike Florida Statutes § 509.141, for it provided that:

> "No keeper of an inn, tavern, hotel, or restaurant, or other place of public entertainment or refreshment of travelers, guests, or customers shall be obliged, by law, to furnish entertainment or refreshment to persons whose reception or entertainment by him would be offensive to the major part of his customers, and would injure his business." 365 U.S. 715, 717; 6 L.Ed.2d 46, 47.

Notwithstanding this statutory provision, the Court concluded in *Burton* that the restaurant, because of its status as the city's lessee and because of its many other intimate involvements with the city, was not, even though privately owned, insulated from the scope of the Fourteenth Amendment.

Burton was, of course, only one of many instances in which the Court has held the action of an ostensibly private party to be, in constitutional contemplation, the act of the government. Thus in *Public Utilities Commission v. Pollak*, 343 U.S. 451; 96 L.Ed. 1068; 72 S.Ct. 813 (1952), the Court held that action of the Capital Transit Company constituted governmental action by virtue of its operating under the regulatory supervision of the Public Utilities Commission of the District of Columbia. To like effect was *Baldwin v. Morgan*, 287 F.2d 750 (5th Cir., 1961), where the Court of Appeals held that the Birmingham Terminal Company, albeit a private corporation, could not effect racial segregation in its waiting rooms, since the "terminal was admittedly a public utility holding itself out to serve all of the traveling public desiring to use the railroads operating through this station in Birmingham." 287 F.2d 750, 755. The Court added that:

> "When in the execution of that public function it is the instrument by which state policy is to be, and is, effectuated, activity which might otherwise be deemed private may become state action within the Fourteenth Amendment." 287 F.2d 750, 755.

Appellants submit that where racial discrimination is practiced, there should be no difference in constitutional consequences between such traditional "public utilities" as a transit company or a railroad terminal company, and a "public food service establishment" licensed and regulated under state law, for the extent of state involvement is no less significant in the latter case.

Moreover, the constitutional consequences of racial

discrimination by the restaurant should be no different than those determined by the Court in the case of the company town in *Marsh* v. *Alabama*, *supra*, where the Court stated that:

> "In our view the circumstance that the property rights to the premises where the deprivation of liberty, here involved, took place, were held by others than the public, is not sufficient to justify the State's permitting a corporation to govern a community of citizens so as to restrict their fundamental liberties and the enforcement of such restraint by the application of a state statute." 326 U.S. 501, 509; 90 L.Ed. 265, 270.

Appellants further contend that the discrimination by Shell's City was no more "an individual invasion of individual rights" than was the action of the Democratic Party in *Smith* v. *Allwright*, 321 U.S. 649; 88 L.Ed. 987; 64 S.Ct. 757 (1944), where the Court outlawed the Texas white primary and ruled that even though the Democratic party in Texas had been characterized as a "voluntary association" under Texas law, nevertheless, since the mechanics of the primary were prescribed in detail by State law and since the party performed duties imposed by State statutes, the duties it performed did not become matters of private law merely because performed by a "private political party". The Court stated that:

> "If the state requires a certain electoral procedure, prescribes a general election ballot made up of party nominees so chosen and limits the choice of the electorate in general elections for state offices, practically speaking, to those whose names

> appear on such a ballot, it endorses, adopts and enforces the discrimination against Negroes, practiced by a party entrusted by Texas law with the determination of the qualifications of participants in the primary. This is state action within the meaning of the Fifteenth Amendment." 321 U.S. 649, 664; 88 L.Ed. 987, 997.

To like effect were the obligations imposed upon the "private" collective bargaining agent in *Steele* v. *Louisville & Nashville Railroad Company*, 323 U.S. 192; 89 L.Ed. 173; 65 S.Ct. 226 (1944).

Appellants submit that the interdependence of the restaurant and the State imposes a positive Constitutional duty upon the restaurant to respect the rights of all customers to be treated and served without regard to their race. Shell's City has nineteen departments in its emporium. It invites the entire public, white and colored alike, to buy its wares in eighteen of the departments, without discrimination. Only in the nineteenth, the restaurant, does it draw the line. Whatever may be its Constitutional obligations *vel non* to sell or not sell notions, hardware, clothing or the like to persons of color in the other eighteen departments, it clearly has the Constitutional obligation to refrain from racial discrimination in its restaurant.

If it be concluded that the majority in *The Civil Rights Cases* may have rejected Justice Harlan's view with respect to the effect of state licensing laws, then and to that extent Appellants pray that the Court no longer follow the majority's ruling. Indeed, the rulings of the Court in the subsequent cases of *Burton*, *Pollak*, and *Smith* v.

Allwright, above, depart from any such implications contained in Justice Bradley's opinion, and it would appear, therefore, that the Court need no longer be bound thereby.

III.

The racial discrimination practiced by Shell's City is engendered by racial customs prevalent in Miami and throughout the State of Florida, and the pressures of state and local customs which were brought to bear upon the Appellants, necessarily constituted a denial by state action of Appellants' rights to the equal protection of the laws within the meaning of the Fourteenth Amendment.

In *The Civil Rights Cases, supra*, the Court stated that:

> "civil rights such as are guaranteed by the Constitution against state aggression, cannot be impaired by the wrongful acts of individuals, unsupported by state authority in the shape of law, *customs*, or judicial or executive proceedings." 109 U.S. 1, 17; 27 L.Ed. 835, 841 (Emphasis supplied.)

The existence and force of such *customs* was made strikingly clear by one of the State's own witnesses in the case at bar. Mr. Warren C. Williams, vice-president of Shell's City, testified that the policy of Shell's City not to serve colored people is "based upon the customs, the habits and what we believe to be the desire of the majority of the white people of this county"; that "it goes back to what

is the custom, that is, the tradition of what is basically observed in Dade County would be the bottom of it"; that it is the customs and traditions and practice in this county—not only in this county but in this part of the state and elsewhere, not to serve whites and colored people seated in the same restaurant"; and that "if we went into a thing of trying to break that barrier, we might have racial trouble, which we don't want." (R. 29, 30)

Not only do these customs exist, but their underlying prejudices have been perpetuated and reinforced by a variety of enactments of the State of Florida which restrict the liberties of colored people and humiliate them as human beings. The Florida Constitution provides that white and colored children shall not be taught in the same school.[18] Separation of the races is required on railroads and in railroad waiting rooms.[19] Segregation of the races is required by county jails.[20] And marital and sexual congress between the races is prohibited and restricted with such elaborate reiteration as to suggest involvement in a paranoid ritual.[21]

But even apart from these enactments, "long-accepted customs and the habits of a people may generate 'law' as surely as a formal legislative declaration, and indeed, sometimes even in the face of it." Frankfurter, J., concurring in *Terry* v. *Adams*, 345 U.S. 461, 475; 97 L.Ed. 1152, 1163; 73 S.Ct. 809 (1953).

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[18]Florida Constitution, Article XII, § 12 (App. 1).
[19]Florida Statutes §§ 352.03-352.18 (App. 1-6).
[20]Florida Statutes §§ 950.05-950.08 (App. 30-31).
[21]Florida Constitution, Article XVI, § 24 (App. 1); Florida Statutes §§ 798.04; 798.05; 741.11-741.16 (App. 26-28).

And as Mr. Justice Douglas observed, concurring in *Garner* v. *Louisiana, supra:*

> "Though there may have been no State law or municipal ordinance that *in terms* required segregation of the races in restaurants, it is plain that the proprietors in the instant cases were segregating blacks from whites pursuant to Louisiana's custom. Segregation is basic to the structure of Louisiana as a community; the custom that maintains it is at least as powerful as any law." 368 U.S. 157, 181; 7 L.Ed.2d 207, 224.

It is Appellants' position that the word "state" as used in the Fourteenth Amendment need not be confined to the political representatives of the people, i.e., the executive, the legislature and the judiciary. Obviously, the people themselves can act politically and directly by constitutional enactment, and by such enactment, violate guarantees of the Federal Constitution. Thus, in *Neal* v. *Delaware*, 103 U.S. 370; 26 L.Ed. 567 (1881) the Court concluded that the Fifteenth Amendment nullified a provision of the constitution of Delaware which had purported to restrict the sufferage to white persons. Appellants submit that if action by the people themselves, as in the case of a constitutional enactment, amounts to state action, then action by the people themselves, even though not manifested in the legal formalism of a constitutional enactment, may likewise constitute state action where it is in the form of the mass pressure of customs and prejudices which coerce the individual private party into compliance.[22] In-

[22]And the "mental urges" behind the restaurant owner's decision to discriminate would be irrelevant. *Peterson* v. *Louisiana, supra,* 31 Law Week 4475, 4476.

deed, if the agents and delegates of the people—the legislators, the administrators and the judges—are restrained from effectuating racial discrimination, then it should follow *a fortiori*, and it would be a strange anomaly if it were otherwise, that the principal, namely the people themselves, should be subject to the same Federal Constitutional prohibitions. Section 2 of the Declaration of Rights of the Florida Constitution explicitly provides that "All political power is inherent in the people." Translated into the terms of the instant case, the people of the State of Florida, acting as the "state", compelled the restaurant owner to discriminate and thus the people of the state, constituting the "state", denied Appellants the equal protection of the laws.

CONCLUSION

For the foregoing reasons, Appellants pray the Court to reverse the judgments below and order that judgments of acquittal be entered as to all of the Appellants.

Respectfully submitted,

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By _____
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CERTIFICATE OF MAILING

I, ALFRED I. HOPKINS, counsel for Appellants and a member of the Bar of the Supreme Court of the United States, hereby certify that on August ___, 1963, I served copies of the foregoing Brief for the Appellants on the Appellee, STATE OF FLORIDA, by mailing a copy thereof in a duly addressed envelope with postage prepaid to the office of RICHARD E. GERSTEIN, State Attorney, Dade County Courthouse, Miami, Florida, and by further mailing a copy thereof to the Honorable RICHARD ERVIN, Attorney General of the State of Florida, Capitol Building, Tallahassee, Florida.

Alfred I. Hopkins

APPENDIX
TO BRIEF FOR THE APPELLANTS

Florida Constitution, Article XII, § 12 provides as follows:

> "White and colored children shall not be taught in the same school, but impartial provision shall be made for both."

Florida Constitution, Article XVI, § 24, provides as follows:

> "All marriages between a white person and a negro, or between a white person and a person of negro descent to the fourth generation, inclusive, are hereby forever prohibited."

Set forth below are the sections of the Florida Statutes cited in the foregoing brief:

352.03 First-class tickets and accommodations for negro persons.—All railroad companies doing business in this state shall sell to all respectable negro persons first-class tickets, on application, at the same rates that white persons are charged, and shall furnish and set apart for the use of such negro persons who purchase such first-class tickets a car or cars in each passenger train, as may be necessary, equally as good and provided with the same facility for comfort as shall or may be provided for whites using and traveling as passengers on first-class tickets.

No conductor or person in charge of any passenger train on any railroad shall suffer or permit any white person to ride, sit or travel, or to do any act or thing to insult or annoy any negro person who shall be sitting,

riding and traveling, in said car so set apart for the use of negro persons, nor shall he or they, while in charge of such train, suffer or permit any negro person, nor shall such person attempt to, ride, sit or travel in the car or cars set apart for the use of the white persons traveling as first-class passengers; but female colored nurses, having the care of children or sick persons, may ride and travel in such car.

352.04 **Separate accommodations for white and colored passengers.**—All railroad companies and other common carriers doing business in this state shall provide equal separate accommodations for white and colored passengers on railroads, and all white and colored passengers occupying passenger cars which are operated in this state by any railroad company or other common carrier are hereby required to occupy the respective cars, or divisions of cars, provided for them, so that the white passengers shall occupy only the cars or divisions of cars, provided for white passengers, and the colored passengers only the cars, or division of cars, provided for colored passengers; provided, that no railroad shall use divided cars for the separation of the races without the permission of the railroad commission, nor any car divided for that purpose in which the divisions are not permanent.

352.05 **Passenger occupying part of car set apart for opposite race; penalty.**—Any white person unlawfully and willfully occupying, as a passenger, any car or part of car not so set apart and provided for white passengers, and any colored passenger unlawfully and willfully occupying, as a passenger, any car or part of car not so set apart and provided for colored passengers, shall, upon conviction, be punished by a fine not exceeding five hundred dollars, or

imprisonment not exceeding six months. Nothing in this section shall apply to persons lawfully in charge of or under the charge of persons of the other race.

352.06 Penalty for violations §352.04.—If any railroad company or other common carrier shall violate any of the provisions of §352.04, or any rule, order or regulation prescribed by the railroad and public utilities commissioners under the authority of §350.20, such company or common carrier shall thereby incur for each such offense a penalty of not more than five hundred dollars, to be fixed, imposed and collected by said railroad and public utilities commissioners in the manner provided in §350.28.

352.07 Separate accommodations for white and negro passengers on electric cars.—All persons operating urban and suburban (or either) electric cars as common carriers of passengers in this state, shall furnish equal but separate accommodations for white and negro passengers on all cars so operated.

352.08 Method of division in electric cars.—The separate accommodations for white and negro passengers directed in §352.07 shall be by separate cars, fixed divisions, movable screens, or other method of division in the cars.

352.09 Divisions to be marked "For White" or "For Colored."—The car or division provided for white passengers shall be marked in plain letters in a conspicuous place, "For White," and the car or division provided for negro passengers shall be marked in plain letters in a conspicuous place, "For Colored."

352.10 Not to apply to nurses.—Nothing in §§352.07, 352.08, 352.09, 352.12, 352.13, 352.14, or 352.15 shall be so construed as to apply to nurses of one race attending children or invalids of the other race.

352.11 Operating extra cars for exclusive use of either race.—Sections 352.07-352.15 shall not be so construed as to prevent the running of special or extra cars, in addition to the regular schedule cars, for the exclusive accommodation of either white or negro passengers.

352.12 Separation of races; penalty.—Any person operating urban and suburban (or either) electric cars as common carriers of passengers in this state, failing, refusing or neglecting to make provisions for the separation of the white and negro passengers on such cars as required by law, shall, for each offense, be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than five hundred dollars. This penalty may be enforced against the president, receiver, general manager, superintendent or other person operating such cars.

352.13 Duty of conductors; penalty.—The conductor or other person in charge of any such car shall see that each passenger is in the car or division furnished for the race to which such passenger belongs, and any conductor or other person in charge of such car who shall permit any passenger of one race to occupy a car or division provided for passengers of the other race, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not exceeding twenty-five dollars, or by imprisonment in the county jail for not exceeding sixty days.

352.14 Violation by passengers; conductor may arrest and eject; penalty.—Any passenger belonging to one race who willfully occupies or attempts to occupy any such car, or division thereof, provided for passengers of the other race, or who occupying such car or division thereof, refuses to leave the same when requested so to do by the conductor or other person in charge of such car, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not exceeding fifty dollars, or by imprisonment in the county jail for not exceeding three months. The conductor or other person in charge of such car is vested with full power and authority to arrest such passenger and to eject him or her from the car.

352.15. Each day of refusal separate offense.—Each day of refusal, failure or neglect to provide for the separation of the white and negro passengers as directed in this chapter shall constitute a separate and distinct offense.

352.16. Separate waiting rooms and ticket windows for white and negro passengers.—All railroad companies and terminal companies in this state shall provide separate waiting rooms and ticket windows of equal accommodation for white and colored passengers at all depots along lines of railway owned, controlled or operated by them, and at terminal passenger stations controlled and operated by them.

357.17 Penalty for refusal to comply with law or regulations.—If any railroad company or terminal company in this state shall refuse to comply with any provision of §352.16, or to comply with any rule, order or regu-

lation provided or prescribed by the railroad and public utilities commissioners under the authority of §350.21, such company shall thereby incur a penalty for each such offense of not more than five thousand dollars, to be fixed, imposed and collected by said railroad and public utilities commissioners in the manner provided by law.

352.18 Penalty for not providing separate cars for white and negro persons.—If any railroad company or any conductor or other employee thereof, or any person whatever, shall violate the provisions relating to the accommodation of white or negro passengers, he or they shall be punished by a fine not exceeding five hundred dollars, unless otherwise provided for.

If any railroad company shall fail to comply with said provisions of law the punishment herein prescribed may be inflicted upon the president, receiver, general manager or superintendent thereof, or upon each and every one of them.

509.012 Hotel and restaurant commission.—There is created a hotel and restaurant commission, for which the usual facilities for transacting its business shall be furnished the same as for other executive departments of the state government.

509.022 Appointment of hotel and restaurant commissioner; term of office; bond and salary.—The governor shall appoint a hotel and restaurant commissioner whose term of office shall begin and run concurrently with the regular terms of office of the successive governors of this state and who shall give bond in the sum of ten thousand dollars for the faithful performance of his duties, to

be approved by the governor. He shall receive a salary as provided in the general biennial appropriations act, or as hereafter provided by law, and shall be reimbursed for travel in connection with the duties of the office in accordance with the provisions of §112.061.

509.032 Duties.—

(1) GENERAL.—The hotel and restaurant commissioner shall carry out and execute all of the provisions of this chapter and all other laws now in force or which may hereafter be enacted relating to the inspection or regulation of public lodging and public food service establishments for the purpose of safeguarding the public health, safety and welfare. The commissioner shall be responsible for ascertaining that no establishment licensed by this commission shall engage in any misleading advertising or unethical practices as defined by this chapter and all other laws now in force or which may hereafter be enacted. He shall keep accurate account of all expenses arising out of the performance of his duties and shall file monthly itemized statements of such expenses with the comptroller, together with an account of all fees collected under the provisions of this chapter.

(2) SEMI-ANNUAL INSPECTION.—The hotel and restaurant commissioner shall inspect, or cause to be inspected, at least twice annually, every public lodging and food service establishment in this state, and for that purpose he shall have the right of entry and access to such establishments at any reasonable time.

(3) AUTHORIZED TO MAKE RULES.—The hotel and restaurant commissioner shall make such rules and

regulations as are necessary to carry out the provisions of this chapter in accordance with its true intent.

509.141 Ejection of undesirable guests; notice, procedure, etc.—

(1) The manager, assistant manager, desk clerk or other person in charge or in authority in any hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court shall have the right to remove, cause to be removed, or eject from such hotel or apartment house, tourist camp, motor court, restaurant, rooming house or trailer court in the manner hereinafter provided, any guest of said hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court, who, while in said hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court premises is intoxicated, immoral, profane, lewd, brawling, or who shall indulge in any language or conduct either such as to disturb the peace and comfort of other guests of such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court or such as to injure the reputation or dignity or standing of such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court, or who, in the opinion of the management, is a person whom it would be detrimental to such hotel, apartment house, tourist camp, motor court, restaurant, rooming house, or trailer court for it any longer to entertain.

(2) The manager, assistant manager, desk clerk or other person in charge or in authority in such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court shall first orally notify

such guest that the hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court no longer desires to entertain him or her and request that such guest immediately depart from the hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court. If such guest has paid in advance the hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court shall, at the time oral or written request to depart is made, tender to said guest the unused or unconsumed portion of such advance payment. Said hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court may, if its management so desires, deliver to such guest written notice in form as follows:

"You are hereby notified that this establishment no longer desires to entertain you as its guest and you are requested to leave at once and to remain after receipt of this notice is a misdemeanor under the laws of this state."

(3) And any guest who shall remain or attempt to remain in such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court after being requested, as aforesaid, to depart therefrom, shall be guilty of a misdemeanor, and shall be deemed to be illegally upon such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court premises.

(4) In case any such guest, or former guest, of such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court, or any other person, shall be illegally upon any hotel, apartment house, tourist camp, motor court, restaurant, rooming house or

trailer court premises, the management, or any employee of such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court, may call to its assistance any policeman, constable, deputy sheriff, sheriff or other law enforcement officer of this state, and it shall be the duty of each member of the aforesaid classes of officers, upon request of such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court management, or hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court employee, forthwith and forceably, if necessary, to immediately eject from such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court, any such guest, or former guest, or other person, illegally upon such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court premises, as aforesaid.

509.211 Safety regulations.—

(1) Every public lodging or public food service establishment shall have signs displayed in all hallways indicating all fire escapes, stairways and exits.

(2) Whenever it shall be proposed to erect a building three stories or more in height, intended for use as a public lodging establishment in this state, the owner, contractor or builder of such establishment shall construct said establishment so that one main hall, on each floor above the ground floor, shall extend to the outside wall at each end; or such main hall may turn at either or both ends, provided the distance from the main hall to the outside of the building, at any point, is no more than the depth of the room facing the outside of the building, and

provided further that the hall so turned shall extend to an exterior wall in which a door or window must be provided.

(3) No building of four or more stories in height shall be constructed for or converted for use as a public lodging establishment unless it be of noncombustible material or fireproof construction. This provision shall not apply to buildings now being used for such purposes.

(4) Before the erection or remodeling of any building for use as a public lodging or public food service establishment is begun, the registered architect's plans or registered engineer's plans, with detailed specifications, shall be approved by the supervising architect or engineer of the hotel and restaurant commission; all plans, specifications and drawings submitted for the purpose of securing building permits from any state, county or municipal building inspector, or other officer having like jurisdiction, shall bear the signature and seal of the architect or engineer and supervising architect or engineer of the hotel and restaurant commission before said building permit is issued; when such plans and specifications are submitted to the supervising architect or engineer of the hotel and restaurant commission for approval, they shall be accompanied by a remittance of an amount equal of the license fee prescribed for an establishment of such size in this chapter, provided that new construction or remodeling costing ten thousand dollars or less need not be accompanied by plans of a registered architect or engineer but scaled drawings shall be submitted to the hotel commission's architect or engineer for approval, as a condition precedent to securing a building permit.

(5) (a) Within sixty days after receipt of notice from the hotel and restaurant commissioner every public lodging establishment or public food service establishment in this state consisting of two stories in height must provide at least two means of exit, which shall consist of either fire escapes or stairways accessible to all occupants of the second floor which shall extend from the second floor to the ground or ground floor.

(b) Within sixty days after receipt of notice from the hotel and restaurant commissioner, every public lodging establishment or public food service establishment in the state consisting of more than two stories in height, shall be equipped with two means of exit, one of which shall be a complete fire escape consisting of iron, steel, concrete or other fireproof material, extending from the uppermost floor to the ground or ground floor and connecting with each floor above the ground floor by means of landings not less than six feet in length or four feet in width which shall be secured to the stirs not less than two feet in width with steps not less than six inches in tread with not more than a forty-five degree angle, such landing or stairs if constructed on the exterior of the building, to be guarded by an iron, steel, or concrete railing not less than thirty inches in height.

(c) Where, in the opinion of the supervising architect or engineer of the hotel and restaurant commission it is evident on inspection that strict compliance with the above two paragraphs, (a) and (b), regarding construction of second means of exit of buildings would in no substantial way increase or improve the safety of a building, the supervising architect or engineer shall suggest that the licensee appeal to a board made up of at least two

supervising architects or engineers and the commissioner for relief from the provisions of this section.

(d) Egress to all such fire escapes shall at all times be kept free and clear of all obstructions and doors leading to such fire escapes shall be constructed of fire resistant materials, equipped with automatic closing devices and panic bolts and such doors shall only open outward to fire escapes on the exterior of the building.

(e) Fire escapes installed inside any such building shall be constructed of fireproof material including walls, floors, ceiling, windows, casements, stairs, hand railings and doors and all other parts comprising same. All egress to inside fire escapes shall be guarded by doors with an automatic closing device, panic bolts and such doors shall only open toward the descent of the fire escape.

(f) All fire escapes shall be constructed, installed, and placed under the supervision of the hotel commissioner, who shall enact rules and regulations governing the same, which shall be in substantial conformity to the now existing code of national fire underwriters, relating to fire exits.

(g) All inside fire escapes shall be kept artifically lighted day and night by a circuit or means, separate and apart from the circuit or means providing for the general lighting of the said building.

(6) At every opening of a fire escape a red light shall be kept burning at all times and said light shall be connected to a circuit or means of lighting, separate and apart from the circuit or means providing for the general

ngnting of said building; there shall be posted and maintained in conspicuous places in each hall and in each guest room except in the hall or rooms on the ground floor of such buildings, plainly written notices reading "fire escapes are indicated by red lights."

(7) Every public lodging or food service establishment shall be provided with one fire extinguisher of a style and size approved by the national board of fire underwriters on each floor containing twenty-five hundred square feet or less of floor area, and one additional fire extinguisher on each floor for each twentyfive hundred square feet or less of additional floor space. Such extinguishers shall be placed in a convenient location in a public hallway outside of the sleeping rooms at or near the head of the stairs and shall always be in a condition for use.

(8) Each bedroom or apartment in each public lodging establishment shall be equipped with a good substantial lock and key on each door opening to the outside or to an adjoining room or apartment, or to a hallway.

(9) (a) The hotel and restaurant commissioner shall inspect or cause to be inspected by a competent engineer, every elevator used to carry passengers and freight, in public lodging and public food service establishments in this state, and when it is found that elevators are in an unsafe condition, the hotel commissioner shall require that such elevators be put in safe condition. Thereupon the owner, manager or lessee of the building or the party in charge thereof, wherein such elevators may be located, shall immediately repair and put such elevator or elevators in a safe condition.

(b) This section shall not apply to hotels, apartment houses, rooming houses or restaurants which now or hereafter maintain elevator service contracts or elevator public liability insurance; provided such public lodging and public food service establishments shall annually file with the hotel and restaurant commissioner a copy of an inspection report made under said service contract, or elevator insurance policy.

(10) All elevator shafts located in public lodging and public food service establishments in this state shall be of noncombustible material, and they shall be constructed in accordance with rules and regulations made and promulgated by the hotel commissioner.

509.221 Sanitary regulations.—

(1) In all cities, towns and villages where a system of waterworks is maintained for public use every public lodging establishment and public food service establishment therein operated shall, within sixty days after a receipt of notice from the hotel and restaurant commissioner, be equipped with suitable water closets or closets for the accommodation of its guests, and such water closets or closets shall be connected by proper plumbing with sewerage and means of flushing such water closets or closets with the water of said system, in such manner as to prevent sewer gas or effluvia from arising therefrom. Provided, that each hotel, rooming house and restaurant shall maintain not less than one toilet for each sex, properly designated; and provided that each hotel and rooming house shall maintain one public bath on each floor for every fifteen guests, or major fraction of that number, rooming on that floor not provided with private

or connecting bathrooms. Public baths shall not be required in hotels where each room is provided with bath.

(2) Every public lodging establishment and every public food service establishment shall be properly plumbed, lighted, heated, cooled or ventilated, and shall be conducted in every department with strict regard to the health, comfort, and safety of the guests or tenants; provided that such proper lighting shall be construed to apply to both daylight and artificial illumination, that such proper plumbing shall be constructed and plumbed according to proper sanitary principles, and that such proper ventilation, or cooling, shall be construed to mean at least one door and one window in each room.

(3) No room shall be used for a sleeping room which does not have an opening to the outside of the building, air shafts or courts. All operating windows in such rooms shall be properly screened and in each sleeping room there must be at least one window with opening so arranged as to provide easy access to the outside of building or courts.

(4) All hotels, rooming houses and restaurants in this state shall provide in the main public washroom clean towels for each guest; any standard commercial paper towels may be used; and in each bedroom furnish each guest with two clean individual towels so that no two or more guests will be required to use the same towel unless it has first been washed. Such individual towels shall not be less than ten inches wide and fifteen inches long after being washed.

(5) All hotels shall provide each bed, bunk or cot

or other sleeping place for the use of guests with pillow slips and under and top sheets of material containing 64 x 64 thread count or better; each sheet to be made ninety-nine inches long and of sufficient width to completely cover the mattress and springs; provided, that a sheet shall not be used which measures less than ninety inches after being laundered. Sheets and pillow slips after being used by one guest, must be washed and ironed before they are used by another guest, a clean set being furnished each succeeding guest.

(6) All bedding, including mattresses, quilts, blankets, pillows, sheets and comforts used in any hotel, apartment house, rooming house or restaurant in this state, must be thoroughly aired, disinfected and kept clean; provided, that no bedding, including mattresses, quilts, blankets, pillows, sheets or comforts shall be used which are worn out or are unfit for further use. No mattress on any bed in any hotel, apartment house, rooming house or restaurant shall be used which is made of moss, sea grass, excelsior, husks or shoddy. Any room in any hotel, apartment house, rooming house or restaurant infested with vermin or bedbugs shall be fumigated, disinfected and renovated until said vermin and bedbugs are exterminated.

(7) It is unlawful for any person to operate any place of business within the state where food is cooked or prepared without keeping all outside doors, windows and other similar openings of said place of preparation screened with wire netting of not less than sixteen mesh screening or protected by properly installed fans.

(8) The owner, tenant, operator or person in charge

of any public lodging establishment or public food service establishment shall keep all flies out of said place.

(9) No person suffering from any contagious or communicable disease shall be employed in any hotel, restaurant, apartment house or rooming house to prepare or handle food, drink, dishes, towels, or linens, or in any other capacity whereby such disease might be communicated to guests or tenants. All employees shall furnish health certificates including a Wassermann test, signed by a registered licensed physician of the state, whenever the hotel and restaurant commissioner or his deputy, in his discretion, deems it necessary for the protection of public health.

509.241 Licenses required; public lodging and food service establishments.—

(1) PUBLIC LODGING ESTABLISHMENTS; DEFINITION; LICENSES; EXCEPTION.—

(a) All buildings, groups of buildings, or other structures kept, used, maintained, advertised as, or held out to the public to be places where sleeping or housekeeping accommodations are supplied for pay to transient or permanent guests or tenants, and apartments, except as hereinafter exempted, are defined and shall be licensed as public lodging establishments. Any reference in the laws of Florida to hotels, motels, motor courts, apartment houses, rooming houses, or similar establishments shall be construed to mean a public lodging establishment as herein defined unless a different intent is clearly evident.

(b) The following are exempted from the provisions of paragraph (a) hereof:

1. All individually or collectively owned one, two, or three family dewelling houses or dwelling units and all of such houses or units which are not operated as a group, unless they are regularly rented to transients or held out to, or advertised to the public as places regularly rented to transients. For the purpose of this chapter transients are persons who are not legal residents of the community and who rent for periods of six months or less.

2. Dormitories and other living or sleeping facilities maintained by public or private schools, colleges, or universities primarily for the use of students, faculty or visitors.

3. All hospitals, nursing homes, sanitariums, and other similar places.

4. All places renting three rooms or less, unless they are advertised or held out to the public to be places that are regularly rented to transients.

(2) PUBLIC FOOD SERVICE ESTABLISHMENTS; DEFINITION; LICENSES; EXCEPTIONS.—

(a) Every building, vehicle, or other structure of similar purpose, or any rooms or divisions in a building, vehicle, or other structure of similar purpose, or any place whatsoever, that is maintained and operated as a place where food is regularly prepared, served or sold for immediate consumption on or in the vicinity of the premises is defined as, and shall be licensed as a public food service

establishment. This shall specifically include establishments preparing food to be called for or taken out by customers, to be delivered to factories, construction camps, airlines and other similar locations for consumption at any place. Any references to a restaurant in the laws of Florida shall be construed to mean a public food service establishment as herein defined unless a different intent is clearly evident.

(b) The following are exempted from the provisions of paragraph (a) hereof:

1. Places maintained and operated by public or private schools, colleges, or universities, primarily for the use of students and faculty.

2. Eating places maintained and operated by churches and religious or fraternal organizations primarily for the use of their members and associates.

3. Eating places located on airplanes, trains, buses, or watercraft which are common carriers.

4. Eating places maintained by hospitals, nursing homes, sanitariums and other similar places.

5. Theatres licensed under the provisions of §205.61, or any other license or occupational tax law enacted in lieu thereof, where the primary use is a theatre and patron service is limited to food items customarily served to the admittees of such theatres.

(3) LICENSES; ANNUAL RENEWALS.—For every establishment coming within the provisions of sub-

sections (1) and (2) of this section, the required license shall be obtained from the hotel and restaurant commissioner. Such license shall not be transferable, and it shall be a misdemeanor for such an establishment to operate without a license. The commissioner may refuse a license, or a renewal thereof, to any establishment that is not constructed and maintained in accordance with the law and rules and regulations of the hotel and restaurant commission. Licenses shall be renewed annually, and the commissioner shall adopt an appropriate regulation establishing a staggered schedule for license renewals which will avoid the necessity of all licenses being renewed on the same day of the year. Due regard shall be given in making the schedule to obtaining a relatively even distribution of license renewals coming due, and, thereby, to equalizing the work load of the commissioner's office staff.

(4) APPLICATION FOR LICENSE; PENALTY FOR FAILURE TO APPLY.—It shall be the duty of every individual who enters the public lodging or public food service business to make application for the licensing of his establishment prior to the commencement of operation. Failure to make application and payment of fee required within thirty days following commencement of operations or within thirty days following the expiration date of an existing license shall constitute a misdemeanor and shall be punishable as such.

509.261 Revocation or suspension of licenses; fines; procedure.—

(1) (a) The hotel and restaurant commision may suspend or revoke the license of any public lodging or public food service establishment that has operated or is

operating in violation of any of the provisions of this chapter or the rules and regulations promulgated by the hotel and restaurant commissioner relating thereto; such public lodging establishment or public food service establishment shall remain closed during the suspension or revocation of such license.

(b) Proceedings for the revocation of any such license shall be commenced by serving a copy of written notice. All notices to be served by the hotel and restaurant commissioner, provided for in this chapter, shall be delivered personally, or by a deputy commissioner, or by registered letter, to the owner, agent, lessee or manager of such building or premises, setting forth the facts constituting the alleged violation, the law or regulation alleged to have been violated, and the time and place of hearing thereon. Any such owner, agent, lessee, or manager shall at any such hearing have the right to cross-examine witnesses, produce witnesses in his defense and appear personally or by counsel. No such hearing shall be held within five days from date of service or mailing of notice unless the violation is of such a nature that extreme danger is imminent to the health, safety, or welfare of the people; then in such an event the hotel and restaurant commissioner may immediately suspend any such license, but in any such case, the owner, agent, lessee or manager shall upon request, be entitled to a hearing at a time and place fixed by the hotel and restaurant commissioner within three days from the date of suspension.

(c) Proceedings of the hotel commission may be reviewed by certiorari to the circuit court of the circuit in which such licensed establishment is located and ap-

peals from any decision of the circuit court may be taken to the supreme court of Florida in the same manner and subject to like conditions as appeals in chancery are taken.

(2) In lieu of the suspension or revocation of licenses, the commissioner, after complying with the procedural requirements prescribed by paragraph (b) thereof, may impose fines against licensees for violations of this chapter or rules and regulations relating thereto. No fine so imposed shall exceed five hundred dollars for each offense, and all amounts collected shall be deposited with the state treasurer to the credit of the general revenue fund.

(3) (a) No license shall be suspended under this section for a period of more than twelve months. Every revocation under this section shall be for one year. No new license shall be issued to the licensee or to any other firm or corporation in which the licensee or anyone of its stockholders are interested, during such suspension or revocation. Every public lodging establishment and public food service establishment, the license for which has been suspended or revoked under the provisions of this section, shall remain closed during such suspension or revocation.

(b) The hotel commissioner is hereby given full power and authority to suspend or revoke any license issued by him for the operation of any hotel, apartment house or rooming house or restaurant, whenever the owner, lessee, or manager, or any other person having exclusively or with others, either direct or indirect charge, control or management of such hotel, apartment house, rooming house, or restaurant, knowingly lets, leases or gives space or concession for gambling purposes or where

gambling is to be carried on, in any manner or by any means denounced by any statute of this state, in such hotel, apartment house, rooming house or restaurant or in or upon any premises which are used in connection with, and are under the same charge, control or management as, such hotel, apartment house, rooming house or restaurant. The suspension or revocation shall be of the license in effect at the date of such suspension or revocation, even though such license may be a renewal of the license which was in effect when the cause for such suspension or revocation arose, and even though it may have been issued to a licensee other than the person, firm or corporation who held the license at the time such cause for such suspension or revocation arose.

(c) Proceedings for suspension or revocation under this section, and for review of such proceedings, shall be in accordance with those provisions of §509.261, which govern proceedings for suspension and revocation for the causes specified in said section.

(d) Every proceeding for suspension or revocation under this section shall be commenced within sixty days after the cause for suspension or revocation specified in paragraph (a) hereof arises.

509.271 **Prerequisite for issuance of city or county occupational license.**—No municipality or county shall originally issue an occupational license to any business coming under the provisions of this chapter until a license has been procured for such business from the hotel and restaurant commissioner.

509.291 Advisory council; composition; purpose; meetings; duties; etc.—

(1) There shall be an advisory council of eight members composed of the president and executive officer of the following organizations: Florida restaurant association, inc., Florida hotel association, inc., Florida apartment house association, inc. and Florida motel or motor court association, inc. Other incorporated associations having similar interests and statewide membership may be represented on the council and shall be entitled to the same privileges upon making application and receiving the approval of the hotel and restaurant commissioner.

(2) The purpose of the advisory council is to promote better relations, understanding and cooperation between the industries represented on the council and between such industries and the hotel and restaurant commission; to suggest means of better protecting the health, welfare and safety of persons utilizing the services offered by the industries represented on the council; and to give the commissioner the benefit of its knowledge and experience concerning the industries and individual businesses affected by the laws, rules and regulations administered by the commissioner.

(3) (a) The advisory council may be called into session by the hotel and restaurant commissioner at his discretion, or it may call itself into session if a majority of the council agrees that a meeting is necessary.

(b) Regardless of whether a meeting is called by the commissioner or by the council, the council must hold

one regular meeting each year and may not hold more than one special meeting in each calendar month. All such meetings shall be held during one day.

(4) The members of the council shall receive no compensation for the performance of their duties hereunder, but the commissioner and the members of the council who are the presidents of their respective associations shall be reimbursed for travel expenses as provided in §112.061, when they attend a meeting called in conformity with the requirements of this section. The executive officers of the several associations shall not be reimbursed for travel expense incurred in attending such meetings.

741.11 **Marriages between white and negro persons prohibited.**—It is unlawful for any white male person residing or being in this state to intermarry with any negro female person; and it is in like manner unlawful for any white female person residing or being in this state to intermarry with any negro male person; and every marriage formed or solemnized in contravention of the provisions of this section shall be utterly null and void, and the issue, if any, of such surreptitious marriage shall be regarded as bastard and incapable of having or receiving any estate, real, personal or mixed, by inheritance.

741.12 **Penalty for intermarriage of white and negro persons.**—If any white man shall intermarry with a negro, or if any white woman shall intermarry with a negro, either or both parties to such marriage shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars.

741.13 County judges not to issue licenses for white and negro intermarriages.—All county judges are prohibited from knowingly issuing a license to any person to intermarry against whom the disabilities in §741.11 specified may or do attach, under the penal sum of one thousand dollars, to be recovered by action of debt in any court of record having jurisdiction, for the use of the school fund.

741.14 Penalty for violation of §741.11.—If any county judge shall knowingly and willfully issue a marriage license for a white person to marry a negro, he shall be punished by imprisonment not exceeding two years, or by fine not exceeding one thousand dollars.

741.15 Marriage between white and negro persons not to be performed.—Any of the persons described in §741.07, who shall knowingly perform the ceremony of marriage between any persons who by the provisions of §741.11 are prohibited to intermarry shall in like manner forfeit and pay the penal sum of one thousand dollars, to be recovered in like manner as in §741.13 for the use of the school fund.

741.16 Penalty for marrying white and negro persons.—If any judge, justice of the peace, notary public or minister of the Gospel, clergyman, priest or any person authorized to solemnize the rites of matrimony, shall willfully and knowingly perform the ceremony of marriage for any white person with a negro, he shall be punished by imprisonment not exceeding one year, or by fine not exceeding one thousand dollars.

798.04 White persons and negroes living in adultery.

—If any white person and negro, or mulatto, shall live in adultery or fornication with each other, each shall be punished by imprisonment not exceeding twelve months, or by fine not exceeding one thousand dollars.

798.05 **Negro man and white woman or white man and negro woman occupying same room.**—Any negro man and white woman, or any white man and negro woman, who are not married to each other, who shall habitually live in and occupy in the nighttime the same room shall each be punished by imprisonment not exceeding twelve months, or by fine not exceeding five hundred dollars.

948.01 **When courts may place defendant on probation.**—

(1) Any court of the state having original jurisdiction of criminal actions, where the defendant in a criminal case has been found guilty by the verdict of a jury or has entered a plea of guilty or a plea of nolo contendere or has been found guilty by the court trying the case without a jury, except for an offense punishable by death, may at a time to be determined by the court, either with or without an adjudication of the guilt of the defendant, hear and determine the question of the probation of such defendant.

(2) Prior to such hearing the court may refer the case to the parole commission for investigation and recommendation. The court, upon such reference, shall direct the commission and it shall be the duty of the commission to make an investigation and report in writing at a specified time to the court upon the circumstances of the offense, the criminal record, the social history, and

the present condition of defendant together with its recommendation.

(3) If it appears to the court upon a hearing of the matter that the defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court, in its discretion, may either adjudge the defendant to be guilty or stay and withhold the adjudication of guilt and in either case stay and withhold the imposition of sentence upon such defendant, and shall place him upon probation under the supervision and control of the parole commission for the duration of such probation. And the said commission shall thereupon and thereafter, during the continuance of such probation, have the supervision and control of the defendant.

(4) In no case shall the imposition of sentence be suspended and the defendant thereupon placed on probation unless such defendant be placed under the custody of said parole commission except as provided in §949.03.

948.03 Terms and conditions of probation.—

(1) The court shall determine the terms and conditions of probation and may include among them the following: That the probationer shall (a) avoid injurious or vicious habits; (b) avoid persons or places of disreputable or harmful character; (c) report to the parole and probation supervisors as directed; (d) permit such supervisors to visit him at his home, or elsewhere; (e) work faithfully at suitable employment insofar as may be possible; (f) remain within a specified place; (g) make reparation or

restitution to the aggrieved party for the damage or loss caused by his offense in an amount to be determined by the court; (h) support his legal dependents to the best of his ability.

(2) The enumeration of specific kinds of terms and conditions shall not prevent the court from adding thereto such other or others as it considers proper. The court may rescind or modify at any time of the terms and conditions theretofore imposed by the court upon the probationer.

950.05 Jails to be constructed so white and colored male and female prisoners may be separated.—The county commissioners of the respective counties of this state shall so arrange the jails of their respective counties that it shall be unnecessary to confine in said jails in the same room, cell or apartment white and negro prisoners, or male and female prisoners.

950.06 Unlawful for white and colored prisoners, male and female prisoners, to be confined together.—It is unlawful for white and negro prisoners to be confined in the county jails of this state in the same cell, room or apartment, or be so confined as to be permitted to commingle.

It is unlawful for male and female prisoners in said jails to be confined in the same cell, room or apartment, or be so confined as to be permitted to commingle, and the sheriffs of this state shall confine and separate all prisoners in their custody or charge in accordance with this chapter.

950.07 Appropriation authorized to remodel jail so classes of prisoners may be separated. — The county commissioners of the several counties of this state are authorized to appropriate from the general revenue fund of the said counties such moneys as are necessary to carry into effect the provisions of §§950.05-950.06.

950.08 Officers refusing to comply with law subject to removal.—Any board of county commissioners and any sheriff willfully refusing to carry out and comply with the provisions of §§950.05 and 950.06 in their respective spheres of duty shall be removed from office by the governor.